Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules with	)	ET Docket No. 98-237
Regard to the 3650-3700 MHz	)	
Government Transfer Band	)	

REQUEST FOR EMERGENCY RELIEF

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SUMMARY

The Commission should immediately lift its freeze on applications for new and major modifications of earth stations in the fixed-satellite service operating in the extended C-band. The freeze is having a devastating and immediate impact on satellite service providers, threatening to strand significant investment and constrain the growth and development of critical satellite services. Yet the imposition of the freeze will not help the Commission to accommodate future fixed wireless services in the extended C-band. Indeed, prospective fixed wireless service providers have shown a decided lack of enthusiasm for using the extended C-band spectrum at all. While there is extensive spectrum allocated for potential wireless competition to the local loop, there is no alternative option available for the provision of critical satellite services absent the licensing of new and modified earth stations in this frequency band. Furthermore, there is no risk of a flood of applications in the extended C-band if the Commission were to lift the freeze. In short, the costs to the public resulting from the imposition of the freeze will be significant, but the benefits to the public will be minimal. There is no good cause for the freeze, and its imposition undermines the public interest. Therefore, the Commission should discontinue the freeze it has imposed on earth station applications in the extended C-band.

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To: The Commission

REQUEST FOR EMERGENCY RELIEF

New Skies Satellites N.V. ("New Skies") respectfully urges the Commission to lift the freeze imposed on applications for new and major modifications of earth station facilities in the fixed-satellite service ("FSS") operating in the 3650-3700 MHz band.[1] New Skies and its existing and future customers for video, data, and Internet services have been injured directly by the Commission's freeze on extended C-band earth stations. As a result of the freeze, consumers in the United States will lose the flexibility, economy, and reliability of FSS services notwithstanding that they are unlikely ever to see the implementation of fixed wireless local loop services in the 3650-3700 MHz band. Although the Commission believes its *Notice* and the accompanying freeze order will promote fixed wireless access ("FWA") service, that service was never intended to operate in the spectrum band to which the Commission has allocated it and, at best, will take years to develop. Dismantling New Skies' existing and future commercial

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[1] *See Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, ET Docket 98-237, *Notice of Proposed Rulemaking and Order* (released Dec. 18, 1998) ("*Notice*"). New Skies files this request pursuant to Section 1.41 of the Commission's Rules. *See* 47 C.F.R. § 1.41 (1998) (requests for informal action).

operations and generally threatening the operations of international satellite systems to promote a non-existent service does not serve the public interest. For this reason, the Commission should not attempt to accommodate new FWA services in the extended C-band. In the meantime, however, the Commission should immediately lift its freeze on earth station applications in the extended C-band.

I. The Freeze Would Undercut Existing FSS Operations and Thwart New FSS Uses.

The freeze on extended C-band earth station applications undercuts New Skies' existing operations and planned future service expansion, as well as other satellite operators' future provision of Tracking, Telemetry and Control ("TT&C") functions.[2] New Skies, an independent, global satellite communications company recently divested from the International Telecommunications Satellite Organization, relies on the extended C-band to serve the world's leading broadcast, Internet, and corporate business network companies and the public served by them.[3] The use of the extended C-band has become increasingly critical; there is a severe shortage of domestic and transatlantic satellite capacity in the standard C-band because of the ever-increasing demand for flexible, reliable, and economic space segment capacity to provide domestic and international telecommunications services.[4]

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[2] On August 7, 1997, nine GSO satellite operators filed a Petition for Rulemaking with the Commission, requesting that spectrum in the extended C-band be allocated for their TT&C use. *See Amendment of Parts 2 and 25 of the Commission's Rules to Designate Extended C-Band Spectrum for TT&C Functions of GSO FSS Systems Operating in Bands above Ku-Band, Petition for Rulemaking*, Report No. 2306, *Public Notice* (Nov. 23, 1998). That petition is still pending before the Commission.

[3] The New Skies satellite network is comprised of five, in-orbit C-band and Ku-Band satellites, with a sixth satellite set to launch in approximately one month; New Skies also has plans for long-term expansion and has existing rights and pending applications for orbital slots in the Ka-band to accommodate future operations.

[4] *See, e.g., Columbia Communications Corporation Application for Special Temporary Authority on the NASA TDRS-6 Satellite*, File No. 120-SAT-STA-96, *Order*, 11 FCC Rcd 8639, 8640 (continued...)

The use of the extended C-band, though limited to the provision of international, intercontinental services, has helped alleviate the capacity constraints in the standard C-band. FSS operators like New Skies can rely upon the extended C-band to satisfy the demand in the United States for international downlink capacity while using the standard C-band for customers who need domestic satellite services. This flexibility enables FSS operators to make efficient use of limited available spectrum.

Operations in the extended C-band constitute a significant portion of New Skies' current operations, and the Commission's freeze has precluded any further expansion of these existing operations. Currently, New Skies has in place several long-term leases for its extended C-band transponders to operators who use that capacity to provide their own services or resell that capacity to end-users. The viability of the extended C-band for the provision of these services is significantly reduced by the inability to license earth stations at new locations or modify existing stations.

But perhaps more importantly for a commercial satellite operator like New Skies, because of the saturation of the standard C-band, the extended C-band represents future growth potential for the service and the company. Today, the footprints of the extended C-band satellite transponders operated by New Skies cover most of North, Central, and South America, and this

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(1996) (noting present shortage of domestic and transatlantic standard C-band capacity); *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to Provide International DBS Service*, IB Docket No. 95-41, *Report and Order*, 11 FCC Rcd 2429, 2430 (1996) (additional C-band capacity is "much-needed" in the domestic market); *see also* Comments of GE American Communications, Inc., at 5 ("[T]he conventional C-band is severely congested at key orbital positions over North and South America."); Comments of PanAmSat Corporation, at 1 (extended C-band is a valuable resource in light of shortage of standard C-band). The standard C-band includes the 3700-4200 MHz and 5925-6425 MHz frequency bands.

capacity would enable New Skies to provide an efficient, cost-effective, flexible, and reliable means for consumers to receive a variety of international broadband services, including video news feeds, video programming, and high-speed data services. Most importantly, with the growth of the Internet, New Skies' satellites provide critical Internet backbone services that link users in the United States to users throughout the world.[5] New Skies is developing and marketing its satellite services directly to end-user customers in the traditional video distribution and direct-to-home markets as well as the rapidly developing multi-media and high speed data markets, providing select retail services and applications to the occasional user over the extended C-band.

With the growth of satellite services into new and higher spectrum bands, satellite operators desperately need spectrum for TT&C links to maintain existing and future satellite systems, and the extended C-band is critical for the provision of those services. Without the use of the extended C-band, advanced satellite system operators (*i.e.*, those operating in the Ka-band and higher frequency bands) under the Commission's current rules must provide TT&C at the edges of their service spectrum. This is technically infeasible, however, because the propagation characteristics of these higher frequencies do not lend themselves to TT&C functions, and because TT&C equipment that operates in this band has not been developed. Extended C-band TT&C links will increase the reliability and reduce operational costs of satellite service, and TT&C equipment for the extended C-band is readily available on the global market. Finally, many satellite operators have initiated satellite development under the assumption that TT&C

[5] Because the United States is a net contributor to Internet traffic, this backbone service is increasingly important.

will be available in the extended C-band, consistent with international practices.[6] The Commission's freeze order jeopardizes the realization of these existing and future operations.

II. New Skies Has No Available Solution to the Problems Created by the Freeze.

The ability to construct new and modify existing earth stations is the life blood of satellite operators and their customers. Because the freeze has cut off all ability to modify existing and obtain new earth stations, New Skies cannot provide services to new customers or meet the changing and evolving demands of its existing customers. Indeed, as a result of the freeze, New Skies and its users already have lost potential customers and face potential revocation of contracts with existing customers. In an attempt to avoid the dramatic adverse consequences of the freeze, New Skies has considered alternative ways to reach new customers and to provide flexible services to existing customers at different locations. None is available.

Often, when it proposes or implements a freeze or reallocation as contemplated in the *Notice*, the Commission refers to a variety of technological "fixes" to solve the resulting problems faced by incumbents.[7] However, traditional technical options on which other displaced

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[6] *See* Comments of the Satellite Industry Association, at 4-6.

[7] *See, e.g., Amendment of Section 2.106 of the Commission's Rules to Allocate spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*, 14 Comm. Reg. 501 (1998) (discussing relocation and retuning as options for displaced Broadcast Auxiliary Service licensees); *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services Petitions for Reconsideration of the Denial of Application for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules; Suite 12 Group Petition for Pioneer Preference*, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545 (1997) ("*28 GHz Decision*") (relocation); *Redevelopment of Spectrum to Encourage the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rulemaking*, 7 FCC Rcd 6886 (1992) (relocation).

service providers have relied are not feasible solutions for a satellite service provider like New Skies. Retuning, relocation of existing customers, and trunking cannot be implemented successfully by satellite operators in the extended C-band.

First, retuning is not technologically possible. Even if the Commission were to allocate replacement downlink spectrum to FSS providers, New Skies could not "retune" the transponders on its orbiting satellites to these new frequencies. Thus, New Skies' existing extended C-band equipment will become a significant stranded investment.[8] Furthermore, there would be a substantial delay between Commission allocation of new spectrum and the ability of New Skies to make use of such spectrum in light of the time and investment required to obtain and launch new satellites.

Second, relocation of existing customers to new transponders is not efficient. The C-band is already overly congested with and in high demand by domestic satellite services. The extended C-band is particularly attractive because it allows customers with international satellite needs to obtain service while leaving the standard C-band to those who require both domestic and international satellite links. Forcing these international customers back into the standard C-band will needlessly exacerbate this congestion, constrain the growth of domestic satellite operations, and result in an inefficient use of scarce spectrum.

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[8] The life of a satellite is between ten and twenty years. New Skies' satellites which provide extended C-band services to North America (*i.e.*, the NSS-803 and NSS-806 satellites) were launched in 1997 and 1998. A large portion of the expense of constructing and launching these satellites was borne with the expectation that the transponders on the satellites, including the extended C-band transponders, would be available to generate revenue over the life of the satellite. To the extent New Skies can no longer obtain revenue from the use of that equipment, New Skies could lose millions of dollars in equipment investment and service revenue and its use of the extended C-band spectrum and equipment will be wasted and inefficient.

Third, trunking is not economically viable. Without the availability of new earth station locations, New Skies must rely on the sixty-five existing, licensed earth stations to provide services to its customers. When a potential new customer is not physically located at one of these sixty-five points, or when an existing customer wishes to expand and receive service at a new location, New Skies could, theoretically, look to a terrestrial network to transmit video or data signals from an existing earth station to a new location. However, given the bandwidth necessary to carry a robust video or data satellite signal, New Skies or its customers would be forced to construct a new, fiber optic system or interconnect, at great expense, to an existing (and increasingly overburdened) telephone, cable, or microwave network. But the construction of a new broadband terrestrial network is prohibitively expensive, and New Skies has already invested substantial funds in its satellite systems on the premise that its services could be downlinked to a full range of terrestrial locations. The costs of effective broadband interconnection are similarly preclusive. Furthermore, a terrestrial distribution network would be an unnecessary and inefficient physical constraint on the flexibility and reach of satellite services.

With no possible technical solution to the freeze on new and modified earth station sites in the extended C-band, New Skies cannot develop markets for new customers and cannot meet the changing and evolving communications needs of its existing customers. Retuning or relocation to a new frequency band, even if such options had been proposed by the Commission, is impossible with respect to in-orbit satellites.[9] Trunking is not a practical

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[9] The Commission has previously recognized that, where there is no other spectrum available to accommodate a displaced service, even on an interim basis, lifting a freeze with respect to that service may be warranted. *See Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands,* (continued...)

alternative to direct satellite transmission to extended C-band earth stations. The freeze order thus has stymied the growth of this critical satellite service, jeopardized existing service contracts, and thwarted the public interest in promoting the growth of, competition in, and access to international video, multimedia, and high speed data services.[10]

III. FWA Could Operate in a Variety of Other Frequency Bands.

The Commission's freeze order sacrifices a viable, operational, and critical international communications service on the pure speculation that an undeveloped and untried local loop service, duplicative of other services, would better serve the public interest, despite the fact that (a) the 3650-3700 MHz band is only one of several bands available for the provision of fixed wireless services, and (b) potential FWA operators themselves have stated that this frequency band does not suit their needs. To wrest critical spectrum from a viable service to promote a technology that is unlikely to succeed in the spectrum band to which it has been designated is a questionable approach to spectrum allocation. But to impose an indefinite freeze that severely hinders existing service while this issue is being considered is simply arbitrary.

Although New Skies is critically dependent on the 3650-3700 MHz block for the provision of service, fixed wireless users can operate in a number of other bands throughout the spectrum. Indeed, the Commission has already allocated a substantial amount of spectrum to accommodate broadband fixed wireless services in a number of frequency bands, including the 400 MHz, 700 MHz, 800 MHz, 900 MHz, 1900 MHz, 24 GHz, 28 GHz, and 39 GHz frequency

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and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.27-25.25 GHz Frequency Bands for Broadcast Satellite Service Use, IB Docket No. 98-172, *Order*, ¶ 11 (released Feb. 10, 1999) ("*PCO Change Order*").

[10] The freeze order has created similar problems and concerns for GSO operators who hope to utilize the extended C-band for TT&C functions.

bands.[11] There has been no showing that these other frequency bands are unavailable or otherwise inadequate for the provision of wireless local loop services. No such alternative spectrum is readily available for satellite services or TT&C links.

Furthermore, FWA operators may have no real use for the narrow band of spectrum the Commission proposes to allocate to them, for a number of reasons. Several parties who filed comments in response to the *Notice* indicated that a wider spectrum allocation would be necessary for truly effective and efficient local wireless loop service with the capability to provide increasingly important enhanced data services.[12] In addition, the existing fixed wireless equipment utilizes Frequency Division Duplex ("FDD") technology, which requires a 50- or 100-MHz separation between transmit and receive channels; this necessary separation is impossible in the proposed 50 MHz allocation. Although the Commission suggested that Time Division Duplex ("TDD") technology might make FWA viable in that band, several comments filed reveal that this type of equipment has not been developed and is not available on the

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[11] *See generally 28 GHz Decision; Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service*, ET Docket No. 97-99, *Memorandum Opinion and Order*, 13 FCC Rcd 15147 (1998); *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600 (1997); *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 (1997); *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996).

[12] *See, e.g.*, Comments of Lucent Technologies, Inc., at 3-4 (use of FDD in 50 MHz block will render FWA carriers unable to provide necessary high speed data services).

market.[13] Finally, several parties expressed understandable trepidation about the viability of a new domestic allocation in this band that is inconsistent with international practices.[14]

The implication of these concerns is clear: while New Skies could continue to make increasingly effective use of the 3650-3700 MHz block to provide critical international Internet backbone, video, and high-speed data services, in conjunction with other satellite operators who could simultaneously use the extended C-band for service expansion and critical TT&C functions, the same spectrum block will not support effectively the provision of FWA. Eliminating the service enjoyed by existing FSS customers and demanded by a growing number of new customers while threatening the reliability of advanced system satellite operators who lack critical TT&C spectrum, in favor of a service that will not work in the spectrum band allocated to it, significantly undermines the public interest.

IV. A Freeze on Applications in the Extended C-Band Is Unnecessary.

In the past, the Commission has issued a freeze on new applications for an existing service in a particular band to avoid a "flood" of speculative applications and to preserve the status quo of available spectrum, thereby reducing the difficulties of relocating or reclassifying an incumbent service to accommodate a new one. However, there is no good cause

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[13] *See, e.g.*, Comments of Airspan Communications Corp., at 1 (use of TDD requires severe reduction in capacity); Comments of SR Telecom, Inc. (TDD is not readily available); Reply Comments of GTE, at 3 ("GTE is aware of no radio equipment available today that works in rural areas and uses a contiguous spectrum block.").

[14] *See* Comments of Transcomm, Inc., at 3-4; Comments of SBC Communications Inc., at 1; Comments of Motorola, at 2. As the Commission explained in the *Notice*, other countries have a particular interest in allocating FWA in the 3400-3600 MHz band and view 3600-3700 MHz as a potential "expansion" band for FWA services. *See Notice*, at ¶ 8 (chart). Several parties commented that, by adopting an allocation inconsistent with international plans, the Commission would prevent FWA providers in the United States from obtaining the benefits of improved technology development and reduced equipment prices in the global market.

to justify a freeze in the extended C-band.[15] The number of earth stations that would ever be licensed in the 3650-3700 MHz band is quite limited. Only sixty-five earth stations have been licensed in the extended C-band over the last ten years and, despite the increasing demand for and growth of international satellite services, the Commission could expect to receive no more than a handful of new applications for extended C-band earth stations if the freeze were lifted.[16] Similarly, the number of TT&C locations required by advanced satellite system operators is small. There is no reason to anticipate that any satellite operator would file a request for more than two TT&C earth stations; thus, there is no reason that the use of this frequency band for TT&C services would threaten the status quo.[17]

Unlike applications for many other services, it is expensive and time-consuming to prepare an application for an earth station. Each earth station applicant must provide a detailed engineering showing, a site survey, and a structural survey, as well as undertake coordination with various government agencies. The expenses of preparing an application are large and therefore not incurred lightly. In addition, there is no real benefit to filing a blanket array of speculative applications for earth stations. There should be no concern, therefore, that

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[15] Although the Commission may in its discretion issue a freeze without notice and an opportunity for interested parties to comment when it "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. § 553(b), such "good cause" does not exist here. As this *Request* demonstrates, the Commission's conclusion in paragraph 13 of the *Notice* that a freeze is necessary to preserve the status quo availability of spectrum in this band is not supported by the circumstances of current and potential satellite users of the extended C-band.

[16] The Commission has previously lifted a freeze where "it would not appear that the relatively small number of . . . applications that are likely to be filed during the pendency of [a] proceeding would significantly disrupt the potential future use" of the spectrum by a new service. *See PCO Change Order*, at ¶ 11.

[17] In fact, these TT&C functions would usually be located at existing sites currently used by operators to control and monitor satellite systems and therefore would pose minimal frequency coordination concerns.

absent a freeze the Commission would receive a flood of applications to construct and operate earth stations in the extended C-band. Thus, there is no good cause to justify the imposition of a freeze.

V. If Necessary, FSS and FWA Could Share the 3650-3700 MHz Band Easily and Efficiently.

Even if, despite the arguments and evidence presented to the Commission in the comments and reply comments filed in response to the *Notice* and in this *Request*, the Commission pursues its plans to promote FWA in the extended C-band, a freeze on earth station applications is still not justified. The Commission, in issuing a freeze on earth station applications in the extended C-band, has failed to consider the unique character of fixed satellite services that render sharing between existing and new FSS and new FWA services a potential simple solution to the problem created by the freeze. Even if the number of earth stations were to increase by fifty percent as a result of new earth station filings and TT&C use, it would be relatively simple, if necessary, to coordinate another fixed service around these locations without creating interference problems. Coordination between FWA and FSS would be facilitated further by the services' inherent geographic separation; while earth stations are generally licensed in urban or suburban communities to serve corporate and Internet networks, cable headends, and other video distributors, FWA is designed to provide a competitive alternative to local loop services in rural areas.[18] Thus, it is unlikely that the two services would ever co-exist

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[18] *See Notice*, at ¶¶ 1, 6 & n.22 ("For example, a fixed service allocation could be used to provide unserved persons with a wireless connection to the public switched telephone network ('PSTN') and to serve economically high-cost wireline service areas, including rural areas."); *see also* Comments of Airspan Communications Corp., at 2 ("true niche market" for FWA is residential and business service in suburban and rural markets); Comments of Cheyenne River Sioux Telephone Authority, at 2 (FWA is solution to problem of providing local loop service to high-cost, low population density areas).

in the same geographic regions and, to the extent they would, coordination could be readily achieved.[19]

Because only a limited number of earth stations would ever be licensed to operate in the extended C-band, and because coordination between these two fixed services is feasible, the two services could peacefully co-exist in the same frequency band. In light of these facts, even if the Commission ultimately concludes that FWA services should be allowed in the extended C-band, it is unnecessary for the Commission to retain its freeze on earth station applications.

VI. The Commission's Freeze on FSS Earth Station Applications Is Contrary to the Public Interest.

The immediate impact of the Commission's freeze is to subordinate a necessary and operational service provider to the speculative and remote possibility of creating a new competitor to the local loop. This trade-off does not promote the public interest. The Commission should not base a decision to institute an immediate and universal freeze on extended C-band earth station applications on the potential auction revenues that FWA providers are willing to risk on the possible viability and economy of local loop services in the 3650-3700 MHz band.[20]

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[19] *See, e.g.*, Comments of Northern Telecom, Inc., at 6 (ITU studies support feasibility of sharing between FWA and FSS); Comments of Comsearch, at 3 (practical experience demonstrates FWA and FSS can coexist); Comments of Tadiran InnoWave, at 4 (emissions from FWA transmitters should not interfere with extended C-band earth stations); Reply Comments of Comsearch, at 1 (sharing of FWA and FSS is generally feasible).

[20] Indeed, any such calculation by the Commission would be contrary to statute. In legislating general auction authority, Congress explicitly forbade the Commission from making spectrum allocation decisions in the public interest based on the expectation of potential revenues from an auction proceeding. *See* 47 U.S.C. § 309(j)(7)(A) ("[T]he Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.").

The Commission, in instituting this freeze, has lost sight of the benefits provided today by FSS in apparent preference for the theoretical but illusory benefits of making this spectrum available for future services competitive with the local loop. New Skies urges the Commission to consider the predicament of this recently formed company and other FSS providers, the plight of its customers, and the concerns of high-band satellite operators and lift the freeze on earth station applications in the extended C-band. By allowing new customers to file applications for earth stations, giving existing customers the flexibility to modify existing stations, and protecting a potential source for TT&C functions, the Commission would protect the interests of local competition without undermining international satellite services in the extended C-band.

CONCLUSION

For the foregoing reasons, New Skies urges the Commission to provide immediate relief from the freeze on new and modified applications for earth stations in the extended C-band.

Respectfully Submitted,

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